

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2595

Introduced by Assembly Member Huffman

February 19, 2010

An act to amend Section 12979 of the Food and Agricultural Code, and to add Section 13269.5 to the Water Code, relating to irrigated agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 2595, as amended, Huffman. Irrigated agriculture: pesticide use: operator identification number: water quality: waste discharge requirements.

Existing law regulates pesticide use, ~~as specified, and provides that~~ *and requires* a pesticide use report ~~shall to~~ be submitted to the county agricultural commissioner or the Director of Pesticide Regulation, as specified, for use in the setting of priorities for, among other things, pesticide use enforcement and pest control research, environmental monitoring, and public health monitoring and research. Existing regulations provide that prior to the purchase or use of pesticides for the production of an agricultural commodity, the operator of the property, as defined, or the operator's authorized representative, shall obtain an operator identification number for pesticide use from the

county agricultural commissioner of each county where pest control work will be performed.

This bill would codify that requirement relating to the operator identification number and, on and after January 1, 2012, would require the county agricultural commissioner to withhold the issuance of an operator identification number for pesticide use if, *pursuant to a notice transmitted by the State Water Resources Control Board or a California regional water quality control board*, an operator of the property is found to be in violation of specified water quality requirements after the exhaustion of all administrative proceedings and appeals, except as provided. The bill would authorize a county agricultural commissioner to levy a *specified* civil penalty, ~~as specified~~, on an operator who obtains an operator identification number by means of fraud. By imposing new requirements on county agricultural commissioners, this bill would impose a state-mandated local program.

Existing law, the Porter-Cologne Water Quality Control Act, requires the State Water Resources Control Board (state board) and a California regional water quality control board (regional board) to prescribe waste discharge requirements, as specified. The act authorizes the state board and a regional board to waive certain waste discharge requirements as to a specific discharge or type of discharge if the state board or the regional board makes a specified determination.

For purposes of implementing the provisions relating to the issuance of an operator identification number for pesticide use, this bill would require the state board or a regional board to provide notice to the Department of Pesticide Regulation and the appropriate county agricultural commissioners if, pursuant to an administrative order ~~and after the exhaustion of all administrative proceedings and appeals~~, the state board or the regional board finds that an operator of the property, as defined, is in violation of any specified water quality requirements. *The bill would prohibit the state board or the regional board from transmitting the notice unless 30 days have elapsed after the date on which specified administrative or judicial appeals and proceedings are exhausted.* The bill would require the state board or the regional board to issue a written certification of compliance to an operator of the property upon remedying the violation, and payment of administrative civil liability imposed, ~~for those specified~~ *the* water quality violations. The bill would require the county agricultural commissioner, upon receipt of a certificate of compliance, to immediately issue the withheld operator identification number to an operator who has remedied the

subject violation or violations. The bill would also make a technical, nonsubstantive change to the provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12979 of the Food and Agricultural Code
2 is amended to read:

3 12979. (a) A pesticide use report shall be submitted to the
4 commissioner or director on a form and in a manner prescribed
5 by the director. The data from the pesticide use reports shall be
6 considered in setting priorities for food monitoring, pesticide use
7 enforcement, farm worker safety programs, environmental
8 monitoring, pest control research, public health monitoring and
9 research, and similar activities by the department, or by the
10 department in cooperation with other state, regional, or local
11 agencies with appropriate authority.

12 (b) Pursuant to Section 6622 of Title 3 of the California Code
13 of Regulations, or any successor regulation, prior to the purchase
14 or use of pesticides for the production of an agricultural
15 commodity, the operator of the property, or the operator's
16 authorized representative, shall obtain an operator identification
17 number for pesticide use from the commissioner of each county
18 where pest control work will be performed.

19 (c) (1) As of January 1, 2012, a commissioner shall withhold
20 the issuance of an operator identification number for pesticide use
21 pursuant to subdivision (b) if, pursuant to a notice transmitted in
22 accordance with Section 13269.5 of the Water Code, the operator
23 of the property is found to be in violation of any of the following
24 water quality requirements:

25 (A) A requirement to obtain individual or general waste
26 discharge requirements.

1 (B) A requirement to furnish a report pursuant to Section 13267
2 of the Water Code.

3 (C) A requirement to enroll in the Irrigated Lands Conditional
4 Waiver Program, or obtain an individual or general waiver of waste
5 discharge requirements, pursuant to Section 13269 of the Water
6 Code.

7 (2) Upon receipt of a certificate of compliance issued by the
8 State Water Resources Control Board or a California regional
9 water quality control board, pursuant to subdivision (b) of Section
10 13269.5 of the Water Code, that an operator subject to paragraph
11 (1) has remedied the subject violation or violations, the
12 commissioner shall immediately issue that operator an operator
13 identification number for pesticide use.

14 (3) A commissioner shall not withhold issuance of an operator
15 identification number pursuant to subparagraph (A) or (C) of
16 paragraph (1) in a county for which the State Water Resources
17 Control Board or a California regional water quality control board
18 has not adopted a requirement that operators of the property comply
19 with waste discharge requirements or obtain a waiver of waste
20 discharge requirements relating to irrigated agriculture.

21 (4) (A) *An appeal or petition for review of an action or*
22 *determination of the State Water Resources Control Board or a*
23 *California regional water quality control board described in this*
24 *subdivision shall be subject to the procedures set forth in Sections*
25 *13320 and 13330 of the Water Code.*

26 (B) *An action of a commissioner pursuant to this subdivision is*
27 *not subject to the procedures set forth in Section 11512.5.*

28 (d) The commissioner may levy a civil penalty of not more than
29 five thousand dollars (\$5,000), pursuant to Section 12999.5, on an
30 operator of the property who obtains an operator identification
31 number by means of fraud.

32 (e) The director may adopt regulations to carry out the provisions
33 of this section. The director shall consult with the State Water
34 Resources Control Board and with commissioners in the
35 development of regulations relating to subdivision (c) in order to
36 ensure that any requirements imposed shall result in minimal
37 disruption to the process of issuing operator identification numbers
38 for pesticide use.

39 SEC. 2. Section 13269.5 is added to the Water Code, to read:

1 13269.5. (a) (1) For purposes of subdivision (c) of Section
2 12979 of the Food and Agricultural Code, the state board or a
3 regional board shall provide a notice to the Department of Pesticide
4 Regulation and the appropriate county agricultural commissioners
5 if, pursuant to an order of the state board or the regional board,
6 ~~and after the exhaustion of all administrative proceedings and~~
7 ~~appeals~~, the operator of the property is found to be in violation of
8 any of the following water quality requirements:

9 (A) A requirement to obtain individual or general waste
10 discharge requirements.

11 (B) A requirement to furnish a report pursuant to Section 13267.

12 (C) A requirement to enroll in the Irrigated Lands Conditional
13 Waiver Program, or obtain an individual or general waiver of waste
14 discharge requirements, pursuant to Section 13269.

15 (2) Subparagraphs (A) and (C) of paragraph (1) shall not apply
16 in a county for which the state board or a regional board has not
17 adopted a requirement that operators of the property comply with
18 waste discharge requirements or a waiver of waste discharge
19 requirements relating to irrigated agriculture.

20 ~~(3) The state board or the regional board shall transmit a notice~~
21 ~~pursuant to paragraph (1) only if 30 days have elapsed after the~~
22 ~~date on which all administrative proceedings and appeals of the~~
23 ~~order issued by the state board or the regional board are exhausted,~~
24 ~~and the operator of the property has not complied with the order~~
25 ~~and paid any administrative civil liability imposed for the violation.~~

26 *(3) If the operator of the property petitions the state board or*
27 *the superior court, pursuant to Section 13320 or 13330, for review*
28 *of an order described in paragraph (1), the state board or the*
29 *regional board shall not transmit a notice pursuant to paragraph*
30 *(1) unless 30 days have elapsed after the date on which all*
31 *proceedings and appeals of the order are exhausted, and the*
32 *operator of the property has not complied with the order and paid*
33 *any civil liability imposed for the violation.*

34 (b) For purposes of subdivision (c) of Section 12979 of the Food
35 and Agricultural Code, the state board or the regional board shall
36 issue a written certificate of compliance to the operator of the
37 property if the operator has remedied the violation and paid any
38 administrative civil liability imposed for a violation of any of the
39 water quality requirements listed in paragraph (1) of subdivision
40 (a).

1 (c) As used in this section, “operator of the property” has the
2 same meaning as set forth in Section 6000 of Title 3 of the
3 California Code of Regulations.

4 SEC. 3. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O